

## **REMARKS**

### Rejection of Claims 1-38 Under the Judicially Created Doctrine of Double Patenting over 6,505,123

In the Office Action mailed March 25, 2004, claims 1-38 were rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-37 of U.S. Patent No. 6,505,123.

Applicant respectfully submits that the rejection under the judicially created doctrine of obviousness-type double patenting is overcome in view of the terminal disclaimer submitted herewith in accordance with the provisions of 37 CFR § 1.321(b). The terminal disclaimer shows the subject application to be commonly owned with U.S. Patent No. 6,505,123. In view thereof, it is respectfully requested that the rejection of claims 1-38 under the judicially created doctrine of obviousness-type double-patenting be withdrawn.

### Claims 1-38 conflict with the claims of Application No. 10/322,187 and Application No. 10/355,971

In the Office Action mailed March 25, 2004, the Examiner stated that claims 1-38 of this application conflict with the claims of Application No. 10/322,187, and also Application No. 10/355,971.

Applicant believes this to be a rejection based on statutory double-patenting. According to MPEP 804 (II)(A), "in determining whether a statutory basis for a double-patenting rejection exists, the question to be asked is: Is the

same invention being claimed twice? 35 U.S.C. 101 prevents two patents from issuing on the same invention. ‘Same invention’ means identical subject matter. *Miller v. Eagle Mfg. Co.*, 151 U.S. 186 (1984); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Ockert*, 245 F.2d 467, 114 USPQ 330 (CCPA 1957).” *emphasis added*.

Applicant respectfully submits that claims 1-38 of the instant application are not identical to the claims of Application No. 10/322,187 and/or Application No. 10/355,971. Claims 1+ of Application No. 10/322,187 are directed to a broadcast network for transmitting individualized weather output signals to a particular communicator device whereby each of the individual communicator devices receives weather information requested by the user in user-defined parameters stored in a user input database. Claims 1+ of Application No. 10/355,971 are directed to a broadcast network for transmitting individualized weather output signals to a particular communicator device whereby each of the individual communicator devices receives weather information requested by the user through a user input database containing a plurality of user profiles, at least some of the user profiles containing parameters provided from a pre-defined user profile, each user profile including a user identifier code. Claims 1-38 of the instant application are directed to a broadcast network for transmitting individualized output signals to a particular communicator device whereby each of the individual communicator devices receives information

requested by the user in user-defined parameters stored in a user input database. Claims 1-38 of the instant application are not limited to weather.

Therefore, it is Applicant's firm belief that the claims of U.S. Application No. 10/322,187, U.S. Application No. 10/355,971, and the instant application are not directed to identical subject matter. If the basis for this rejection is not statutory double-patenting, clarification of this rejection would be appreciated.

In the Office Action, it was stated that this application currently names joint inventors. Applicant was advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the Examiner to consider the applicability of 35 USC § 103 (c) and potential prior Art under sections (e), (f) or (g) of 35 USC § 102. The Examiner is advised that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made.

Rejection of Claims 1-38  
Under the Judicially Created Doctrine of Double Patenting over  
U.S. Application No. 10/322,187 and U.S. Application No. 10/355,971

In the Office Action mailed March 25, 2004, claims 1-38 were provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims claim 1+ of copending Application No. 10/322,187 and claims 1+ of Application No. 10/355,971.

Applicant respectfully submits that the provisional rejection under the judicially created doctrine of obviousness-type double patenting is overcome in view of the terminal disclaimer submitted herewith in accordance with the provisions of 37 CFR § 1.321(b). The terminal disclaimer shows the subject application to be commonly owned with U.S. Application No. 10/322,187 and U.S. Application No. 10/355,971. In view thereof, it is respectfully requested that the rejection of claims 1-38 under the judicially created doctrine of obviousness-type double patenting be withdrawn.

Rejection of Claims 1-38 Under 35 U.S.C. § 103(a)

In the Office Action mailed March 25, 2004, claims 1-38 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Schwoegler (U.S. Patent No. 6,590,529).

Submitted herewith is an affidavit under 37 CFR 1.131 of Steven A. Root, the inventor of the present invention. It is respectfully submitted that this affidavit and the evidence attached hereto as Exhibits A-F show that the invention recited in claims 1-38 was conceived prior to the effective date of Schwoegler. In view of the affidavit, and since the effective date of Schwoegler (February 14, 2000) is not more than one year prior to the effective filing date of the instant application (July 24, 2000), Schwoegler is not prior art and therefore not a bar to the grant of a patent on the present application.

This affidavit and the exhibits attached hereto show that the invention recited in claims 1-38 was also conceived prior to the effective date of Kelly et al. In view of the affidavit, and since the effective date of Kelly et al. (April 12, 2000) is not more than one year prior to the effective filing date of the instant application (July 24, 2000), Kelly et al. is not prior art and therefore not a bar to the grant of a patent of the present application.

The Lemelson et al. reference teaches a system including a warning unit that is carried by a person or that is located in mobile units or in buildings or houses. The warning unit includes a geographic satellite receiver and a receiver circuit that receives broadcast warning signals defining dangerous situations and geographic locations of the dangerous situations. Lemelson et al's. system further comprises a response center. The response center broadcasts warning signals that are simultaneously received by all portable warning units within radio signal range (see Col. 3, Lines 61-64). Each warning unit then compares its own location coordinates with the coordinates of the dangerous situation received in the emergency warning signal from the response center and determines whether or not the warning unit is in a dangerous area (see Col. 10, Lines 37-42). Lemelson et al. does not address 1) any location specific informational content other than severe weather, and 2) any location specific marketing information content.

More particularly, Lemelson et al. (6,028,514) does not teach, disclose or even suggest:

- 1) a broadcast network having a user input database containing a plurality of user-defined parameters as recited in claims 1-38;
- 2) any of the user-defined parameters recited in claims 1-38, such as the spatial range identifier or content identifier;
- 3) a communication network transmitting each individualized output signal to the particular communicator device identified by the user identifier code in the user profile, as recited in claims 1-38; and
- 4) a broadcast network having a communicator location database containing real-time data indicative of the spatial locations of the communicator devices, as recited in claims 1-9 and 22-30. In fact, the broadcast network in Lemelson has no idea where the communicator devices are located.

Baron, Sr., et al. (6,018,699) teach a system for providing real-time site specific weather information comprising a weather alert manager that receives meteorological data and combines the meteorological data with a geographical grid covering a predefined geographic area to produce a storm profile for the storms within the geographical area, wherein the geographic grid partitions the geographic area into a plurality of cells. Baron, Sr., et al. teach a user of the weather alert manager defining the size of "cells" in a geographic grid, rather

than "a user input database containing a plurality of user-defined parameters with each of the user-defined parameters including a spatial range identifier", as recited in claims 1-38. While it may be true that Baron, Sr., et al. teach an end user database (see Col. 8, Lines 1-19), Baron, Sr., et al. does not teach user-defined parameters that effect the content of information transmitted to the remote units.

Baron, Sr., et al. teach a weather alert manager 12, a distribution network 14, and a plurality of remote units 16. Briefly stated, the system 10 receives meteorological data including weather information for a geographic area which is relevant to one or more of the remote units 16. The meteorological data is processed to generate storm profiles for the storms within the meteorological data. The storm profiles are distributed to the respective remote units 16 by the distribution network 14. In response to the storm profiles, the remote units provide weather information that is relevant to a specific geographic area predefined for each remote unit 16. In Baron, Sr., et al., certain grid location are predefined and the remote unit 16 either selects information concerning these predefined grids, or, the remote unit 16 may only receive storm profiles that are specifically addressed to it. In either situation, Baron, Sr., et al. does not teach or suggest the communicator location database containing real-time location data, or an analysis unit as recited in claims 1-9 and 22-30.

For example, a subscriber of Baron, Sr., et al. may select to receive weather information concerning Oklahoma County, Oklahoma. If a storm sweeps through a portion of Oklahoma County, Oklahoma, an alert will be sent to the subscriber's remote unit. However, at that time, the subscriber and the subscriber's remote unit may be located in St. Louis, Missouri and thus the alert would not be relevant to the user at that time.

Clark et al. teach a wireless telecommunication system that receives information from a wireless mobile unit and determines that the wireless mobile unit is within a region predefined by the telecommunications system so that information specific to the predefined region may be sent to a traveler as he or she enters the predefined region. Thus, a traveler must enter the predefined region in order to receive information specific to that predefined region. However, Clark et al. does not teach a broadcast network having a user input database containing a plurality of user-defined parameters as recited in claims 1-38; any of the user-defined parameters recited in claims 1-38, such as the spatial range identifier or content identifier; a communication network transmitting each individualized output signal to the particular communicator device identified by the user identifier code in the user profile, as recited in claims 1-38; and a broadcast network having a communicator location database containing real-time data indicative of the spatial locations of the communicator devices. In fact, the wireless telecommunications system in Clark et al. has no

idea where the wireless mobile unit is located within a predefined region, it merely recognizes that the wireless mobile unit has entered the predefined region. Further, the traveler receives information related generally to the entire predefined region, not a spatial range determined by and located around a user as recited in claims 1-38.

Foust teaches a cable network which broadcasts weather data concerning a region 60 divided into a plurality of sub-regions 62 (see col. 8, Ins. 36-49). Foust also teaches a mobile receiver 23. However, Foust does not teach the communicator location database, or an analysis unit as recited in claims 1-9 and 22-30. Rather, Foust teaches the mobile receiver 23 monitoring its own location, and selecting a channel or data for its own location. This is similar to the system described in Lemelson.

Claims 1-9, and 22-30 recite (among other elements):

a communicator location database containing real-time data indicative of the spatial locations of the communicator devices; and

an analysis unit automatically and continuously comparing the spatial locations of the communicator devices contained . . . to generate individualized output signals.

Burfeind does not teach or suggest either of these two features. That is, Burfeind teaches a system where natural-phenomenological data is gathered

from a variety of sources, such as current ground observations, forecast conditions, satellite images, and radar data. Personal preferences of the subscribers are also gathered and stored, such as activities of the subscriber, geographic locations of the activities, sensitivities of the subscriber to natural phenomena, calendar information of the subscriber, and modes of delivery. The personal preferences of the subscriber are used as a filter to identify the natural-phenomenological data that is particularly useful to the subscriber, and the resulting information is delivered to the subscriber. The subscriber identifies the destination device that the information is delivered to (see col. 3, lines 3-10).

In particular, Burfeind teaches that the user can specify the "activity(ies) that the subscriber is or will be engaged in, the location(s) of the activity(ies), and the subscriber's sensitivities to natural-phenomenological conditions while engaged in the activity(ies), calender schedule information, and lastly, information describing the output device(s) of the subscriber 490, 491, 492, also depicted as output medium 240 in FIG. 2, to which will be transmitted the personalized natural-phenomenological information."

Claims 31-38 are believed to be patentable for the same reasons stated above for claims 1-9 and 22-30. That is, claims 31-38 include the step of receiving real-time data indicative of the spatial locations of the communicator devices by a communicator location database. As discussed above, Burfeind,

Foust, Lemelson and Baron Sr. et al. do not teach or even suggest a communicator location database, or the step of receiving real-time data indicative of the spatial locations of the communicator devices by a communicator location database.

Neither the Murray reference nor the Cannon et al. reference teach a communication system wherein the communicator location database contains real-time data indicative of the spatial locations of the communicator device as recited in claims 1-38. Rather, the references teach a non-real-time communication system that uses store-and-forward technology to transmit information to users.

Therefore, it is Applicants' position that claims 1-38 are neither taught or suggested by Lemelson, Baron, Sr. et al., Clark et al., Foust,, Burfeind, Murray, or Cannon et al.

For the foregoing reasons, it is respectfully requested that the rejection of claims 1-38 under 35 U.S.C. § 103(a) be withdrawn, and such claims passed to issue.

## **CONCLUSION**

This is intended to be a complete response to the Office Action mailed March 25, 2004. It is Applicants' belief that the inventive concept recited in the pending claims is patentable over the art of record and that such claims are necessary to afford Applicants with the degree of patent protection to which Applicants are entitled by law. In view of the above, Applicants respectfully submit the claims are in a condition for allowance and requests issuance of a Notice of Allowance thereof.

Should the Examiner have any questions or comments concerning the before-mentioned amendments to the application or any other matter, Applicants' attorney will welcome the opportunity to discuss same with the Examiner.

Respectfully submitted,

*Marc Brockhaus*

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